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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,853	12/31/2001	James Thomas Cook	DANA-265	5316
10291	7590	05/20/2004	EXAMINER	
RADER, FISHMAN & GRAUER PLLC 39533 WOODWARD AVENUE SUITE 140 BLOOMFIELD HILLS, MI 48304-0610			HOOK, JAMES F	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 05/20/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/029,853

Applicant(s)

COOK ET AL.

Examiner

James F. Hook

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-19 is/are pending in the application.
- 4a) Of the above claim(s) 14-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The amendment filed March 5, 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "said chlorinated polyethylene polymer having a percentage, by weight, less than thirty percent of the material composition of said inner tubular portion".

Applicant is required to cancel the new matter in the reply to this Office Action. As best understood by the examiner, applicant states that support is given by the fact that when different elements of the table on page 5 are summed up they reach 330 parts, if such were true it is only true when the largest values of each are chosen, if one does that then 100 parts by weight of CPE polymer has to be used and that would result in 30.3% CPE polymer by weight compared to the 330 total weight, therefore it does not support less than thirty percent. If the same is done for the minimum amounts in the table then 38% is the amount of CPE, also not providing support for the new claim language. There is clearly no support for a value less than 30% when the range taught by the table is 30.3%-38%. Therefore such is new matter.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-4 and 6-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As per the objection to the specification above, the material inserted into claim 1 as described above constitutes new matter for the reasons stated above.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 7, and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosencrans in view of Lalikos. The patent to Rosencrans discloses the recited hose for transmitting liquids comprising an inner tubular portion 40 made of a chlorinated polyethylene polymer (CPE), a ply of braided reinforcement 42 which can be a metal wire, a thin layer 44 which can be made of similar or the same CPE material as the inner layer which is a known elastomeric material, a layer 46 also braided which can be made of polyester yarn, and an outer layer 48, plasticizers can be provided which include blends of polymeric material and esters, stabilizers can be provided including blends of metal oxides and known materials which are considered silicates such as clays, the layers are cross linked by a vulcanization process using peroxide to cure it,

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quinoline is used as an additive also and is considered to be the equivalent of what the applicant is claiming, and there can be other cross linking agents provided along with the peroxide. The patent to Rosecrans discloses all of the recited structure with the exception of forming the outer layer 48 of a dye containing urethane, but rather forms the layer of an elastomeric material with an added reinforcement layer 50 to protect it, and stating the amount of CPE used can be less than 30% by weight, however, such is considered to be merely a choice of mechanical expedients where the specification fails to disclose any more than the amount of CPE used and does not set forth that the amount is less than 30% of the total amount or that such is necessary for the success of the invention, therefore such is considered to be merely a choice of mechanical expedients where it would have been obvious to one skilled in the art to use routine skill and experimentation to arrive at optimum values of CPE to be used. The patent to Lalikos discloses the recited hose for transmitting liquids comprising in inner tubular layer 10, a reinforcement layer 11, a second reinforcement layer 12, a cover layer 13 and 14, where the cover layer can be formed of urethane and can be provided with color which inherently would include a dye to form an outer protective layer that can show wear. It would have been obvious to one skilled in the art to modify the hose in Rosencrans by substituting a urethane outer layer provided with a dye as suggested by Lalikos as such would provide a tough outer layer which would not need an additional reinforcement layer to protect it, and would thereby reduce costs, and where such could be provided with color or dye to help detect wear in the outer sleeve.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosecrans in view of Lalikos as applied to claims 1-4, 6, and 7 above, and further in view of Kemper. The patent to Rosecrans as modified discloses all of the recited structure with the exception of stating what type of metal wire is used for the reinforcement metal ply. The patent to Kemper discloses the recited hose for transmitting liquids comprising an inner tubular portion 22 of CPE, a braided reinforcement layer 21, a cover layer 25, another reinforcement layer 23, and an outer layer 26, where the reinforcing layers can be formed of metal wires which can include brass plated steel wires. It would have been obvious to one skilled in the art to modify the metal wire layer in Rosecrans by using any type of metal wire including brass plated steel wires as such are known wires used for reinforcement in multiplayer reinforced hoses for transmission of fluids as suggested by Kemper, where the brass plated steel wire would be resistant to rust and other forms of damage.

### ***Response to Arguments***

Applicant's arguments with respect to claims 10-13 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed March 5, 2004 have been fully considered but they are not persuasive. The arguments are directed toward the prior art not teaching less than 30% of CPE used, however, as set forth above such is not only new matter to the instant application, it is also considered merely a choice of mechanical expedients. The arguments set forth that such is important to meet higher temperature resistance is not persuasive when the specification sets forth on page 4, lines 12-15 that just the use of

CPE over other materials allows for higher temperature resistance, and further in lines 20-22 that the use of two plasticizers also aids in higher temperature resistance. The entire specification is silent to the amount by weight used of CPE is in any way linked to any specific feature of the invention other than being mentioned once in the table on page 5, and that only supports a value of slightly higher than 30% as set forth above. Therefore, there is not teaching that the amount of CPE used is an important factor in the instant application, and therefore such is considered a choice of mechanical expedients to vary the amount of CPE used. The remaining arguments are also directed solely to the prior art lacking a teaching of less than 30% CPE used. There are no arguments present directed toward any improper combining of references therefore it appears that there is no question of whether the modifying references are properly combined.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Payne, Campbell and Niki disclosing state of the art tubes.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

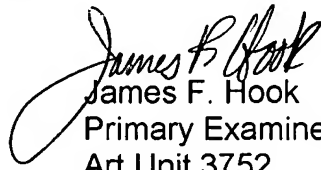
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (703) 308-2913. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James F. Hook  
Primary Examiner  
Art Unit 3752

JFH